

**UT 08-1**

**Tax Type: Use Tax**

**Issue: Private Vehicle Use Tax – Business Reorg/Family Sale**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**ABC FAMILY TRUST,  
Taxpayer**

) **No.: 07-ST-0000**  
) **IBT: 0000-0000**  
) **NTL Nos.: 00 00000000000000**  
) **00 00000000000000**  
)  
) **Julie-April Montgomery**  
) **Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Marc L. Muchin, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, Trustee for the ABC Family Trust.

**SYNOPSIS:**

The Department of Revenue ("Department") issued two Notices of Tax Liability ("Notices") to the ABC Family Trust ("Taxpayer"). These Notices allege Taxpayer underpaid Illinois Vehicle Use Tax for two motor vehicles. Taxpayer timely protested these Notices. Taxpayer believes it overpaid the tax because only a correction of title, not a transfer of title, had occurred, and as such, no tax was due or, in the alternative the transfers were between family members, and as such, subject to a tax rate of \$15 per vehicle. Either way, Taxpayer believes that it is entitled to a refund of either the entire \$680 tax it paid because no transfer occurred but a title correction or, \$650 because the transaction was between family members, and as such, subject to the lower tax rate of

\$15 per vehicle. A hearing was held on November 8, 2007 during which the parties presented testimony and exhibits on their behalf. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings of fact and conclusions of law:

**FINDINGS OF FACT:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission of the Notices of Tax Liability, under certificates of the Director. Department Ex. Nos. 1-2.<sup>1</sup>
2. On July 1, 2004 Jane Doe purchased a new 2004 Ford Excursion. Department Ex. No. 7 (State of Illinois Certificate of Title for a vehicle numbered 000000000000000000).
3. Jane Doe was the owner of the new 2004 Ford Excursion, and as such, issued a Certificate of Title by the Illinois Secretary of State. *Id.*
4. Taxpayer paid for the new 2004 Ford Excursion. Taxpayer Ex. No. 2 (check drawn on Taxpayer's account for payment of the Ford Excursion).
5. On October 3, 2005 Jane Doe purchased a new 2005 Ford truck. Department Ex. No. 5 (State of Illinois Certificate of Title for a vehicle numbered 000000000000000000).
6. Jane Doe was the owner of the new 2005 Ford truck, and as such, issued a Certificate of Title by the Illinois Secretary of State. *Id.*
7. Taxpayer paid for the new 2005 Ford truck. Taxpayer Ex. No. 7 (check drawn on Taxpayer's account for payment of the Ford truck).

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<sup>1</sup> Taxpayer submitted many of the exact same exhibits into evidence as the Department. These duplicate exhibits are Taxpayer Exhibit Numbers 3 (Department Ex. No. 7), 4 (Department Ex. No. 8), 5 (Department Ex. No. 4), 8 (Department Ex. No. 5), 9 (Department Ex. No. 6), 10 (Department Ex. No. 3). For purposes of this recommendation only the Department's exhibits will be cited for these duplicates.

8. On May 17, 2006 Jane Doe sold both vehicles to the Taxpayer. Department Ex. Nos. 5, 6 (State of Illinois Certificate of Title for a used Ford truck numbered 000000000000000000), 7, 8 (State of Illinois Certificate of Title for a used Ford Excursion numbered 000000000000000000).
9. On June 8, 2006, John Doe, as Taxpayer's manager, filed Use Tax Transaction Returns ("Returns") which identified Jane Doe as seller, Taxpayer as purchaser and the purchase price of each vehicle as \$10. Department Ex. Nos. 3 (RUT-50 for the Ford Excursion), 4 (RUT-50 for the Ford truck).
10. John Doe attempted to pay tax of \$15 for each vehicle on June 8, 2006. Having only the Returns and no other supporting documentation, the Department would not accept the Returns with \$15 tax payments. The Returns were filed and a tax payment of \$290 was made with regard to the 2004 Ford Excursion and \$390 with regard to the 2005 Ford truck. Tr. pp. 19-20; Department Ex. Nos. 3-4.
11. John Doe did not attempt to dispute the \$290 and \$390 tax amounts paid on June 8, 2006 because he thought it "prudent...to go ahead and pay" these amounts so that he could get the vehicles re-titled. Tr. pp. 7, 20.
12. The Department issued Notices that found the vehicles' values, as stated on the Returns, to be understated. The Notices reflect the Department's calculation of additional tax due, along with penalties and interest, based upon an "independent valuation of the vehicle[s]." Department Ex. Nos. 1-2.
13. Jim Doe is the sole beneficiary of the ABC Family Trust. Department Ex. No. 9 (Taxpayer's protest letter).

## **CONCLUSIONS OF LAW:**

The Illinois Vehicle Use Tax (“VUT”) is codified as part of the Illinois Vehicle Code (“Code”) and imposes a tax on “the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of the Code acquired by gift, transfer, or purchase.” 625 ILCS 5/3-1001. The tax, which is based upon the vehicle’s selling price, is detailed in a schedule set forth in Section 3-1001 of the Code.

There exists a family exception to the VUT’s scheduled tax rate that is also set forth in Section 3-1001 of the Code, which provides that “the tax rate shall be \$15 for each motor vehicle acquired...when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the transferor.” 625 ILCS 5/3-1001(i). Moreover, such a claim for taxation at the rate of \$15 for the family exception must be supported by “proof of family relationship as provided by rules of the Department.” *Id.* The Department’s regulations provide that such proof is to be “supported by a certification of family relationship. The certificate must be executed by the transferee and submitted at the time of filing the return. The certification must include the transferor’s name and address, the transferee’s name and address and a statement that describes the family relationship between them.” 86 Ill. Admin. Code Sec. 151.105(e). Thus, the books and records necessary to prove the VUT’s family exception relationship must consist of documents that conform to this Department regulation.

The Code also requires every vehicle in Illinois to have a certificate of title. 625 ILCS 5/3-101(a). Moreover, when a correction to a title certificate is required, the law requires one make application with the Illinois Secretary of State for such corrected title certificate. 625 ILCS 5/3-111.1. The Illinois Secretary of State requires: 1) completion of both an “Application for Title Only” and the “Application of Corrected Registration” for every purchaser involved; 2) a properly assigned certificate of title/origin; 3) submission of “Incorrect Illinois Certificate of Title” with the applicable lien release(s);

4) payment of \$68; and 5) completion of the “Title Switch Affidavit.” See Secretary of State’s “Vehicle Services Department Fact Sheet, Title Switch Affidavit,” October 2006 ([http://www.cyberdriveillinois.com/publications/pdf\\_publications/vsd6243.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/vsd6243.pdf)).

As regards the VUT, the Illinois legislature granted the Department power to administer and enforce provisions of the VUT, including the power “to determine all rights to credit memoranda or refunds arising on account of the erroneous payment of tax penalty or interest hereunder.” 625 ILCS 5/3-1003. The VUT also grants the Department and persons subject to the VUT:

the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Use Tax Act, as now or hereafter amended, which are not inconsistent with this Article, as fully as if provisions contained in those Sections of the Use Tax Act were set forth in this Article.  
625 ILCS 5/3-1003.

Section 12 of the Use Tax Act (35 ILCS 105/1 *et seq.*) incorporates by reference section 5 of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*) which provides that the Department’s determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 105/12; 120/5. Once the Department establishes its *prima facie* case, the burden of proof shifts to the Taxpayer to prove, by sufficient documentary evidence, that the tax assessed, including penalty and interest, is correct. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1<sup>st</sup> Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2<sup>nd</sup> Dist. 1978). In order to overcome the Department’s *prima facie* case, the Taxpayer must present more than testimony denying the accuracy of the Department’s assessment. A. R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833-34 (1<sup>st</sup> Dist. 1988). Taxpayer must present evidence that is consistent, probable, and identified with books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 333, A. R. Barnes at 833-34.

In the present case, the Department's *prima facie* case was established when the Department's certified copies of the Notices were admitted into evidence. Once the Notices were admitted into evidence, the Department's position is legally presumed to be correct.

Taxpayer's response was to present checks drawn on its own account that represented payment for the vehicles in question, at or around the time of the initial/original purchases. Taxpayer asserts that because payment for the vehicles was initially made by it, such evidences that it was always the legal owner of the vehicles. Taxpayer alleges that more than a year after the purchases, it became aware that the vehicles were not titled properly (tr. pp. 7, 18) so Taxpayer re-titled the vehicles under its name so as to correct the titling mistakes. Lastly, Taxpayer asserts that if one does not accept that it was the initial owner of the vehicles, the subsequent transfers of the vehicles to it were transfers between a husband and wife because Jane Doe's husband, Jim, is the sole beneficiary of the trust to whom the vehicles were transferred. Taxpayer only presented titling documents, copies of checks reflecting payment for the vehicles, a sales invoice<sup>2</sup> for the 2004 Ford Excursion, a payoff statement for the Ford truck, and statements that outlined its arguments. Tr. pp. 7-8, 18-22, 27. Taxpayer presented no witnesses to testify. Tr. pp. 18, 21-22.

Taxpayer's argument, that its payment for the cars evidences that it, and not Jane Doe, was the legal owner of the vehicles since the initial purchases, is rejected. The entity that pays for an item is not always the owner. For example, it is not so unusual that parents pay, in whole or part, for cars for children. Certainly, the best evidence of car ownership in Illinois is the certificate of title. The Code states that a "certificate of title issued by the Secretary of State is prima facie evidence of the facts appearing on it." 625 ILCS 5/3-107(c). The original/first title issued with respect to both vehicles lists Jane

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<sup>2</sup> This invoice identifies "Ron Doe" as purchaser. Taxpayer Ex. No. 1 (Zimmerman Ford sales invoice). There was no evidence presented as to who "Ron Doe" is.

Doe as the owner. The subsequent/second titles issued state Jane Doe was seller of the vehicles in question and the Taxpayer the new owner. All of these titles are *prima facie* evidence that Taxpayer was not the owner of the vehicles since the initial purchases in 2004 and 2005 and Taxpayer has not shown otherwise. Taxpayer presented no competent documentary evidence or the testimony of Jane Doe or Jim Doe, to overcome the *prima facie* facts presented in the certificates of title that named Jane Doe as the initial owner of the vehicles. In fact, the sales invoice (Taxpayer Ex. No. 1) for the 2004 Ford Excursion identifies Ron Doe as the purchaser instead of Jane Doe thereby substantiating that a purchaser is not always the owner.

The original titles for the vehicles listed Jane Doe as the owner. The subsequent titles record Jane Doe as the “seller” of vehicles transferred to Taxpayer. The Returns filed with the Department, for the subsequent titles, indicate a \$10 purchase price was paid for each vehicle where the seller was stated to be Jane Doe and the purchaser the Taxpayer. Again, Taxpayer did not produce any witnesses or documents that showed an attempt to comply with the requirements necessary for a correction of title as required by the Illinois Secretary of State. Hence, no correction of titles can be said to have occurred.

The VUT provides an exception for the purchase or transfer of a vehicle among family members, like spouses. Qualification for this family exception requires certification of the family relationship. Taxpayer failed to produce any witnesses to establish that the certification that the Department requires for one seeking the family exception was undertaken. Moreover, the VUT does not provide an exception or exemption for vehicles acquired by trusts. The vehicles in question were acquired from Jane Doe by the Taxpayer which is a trust. A trust is a separate legal entity, not an individual. The trust and not Mr. Doe is the party with whom these transactions occurred. Moreover, a trust cannot be a relative of an individual like Jane Doe. The vehicles in question were acquired by a trust, Taxpayer, from an individual, Jane Doe, amongst whom no familial relationship exists. Thus, no purchase or transfer between

family members can be said to have occurred and the acquisition of the vehicles represented taxable transactions, from an individual to a trust, under the VUT that are not subject to any exception.

In light of the above, Taxpayer's belief that it is entitled to a refund with regard to both vehicles is without basis, and as such would not have been granted if a claim had been filed.

**RECOMMENDATION:**

For the reasons stated above and because Taxpayer did not present sufficient evidence to overcome the Department's *prima facie* case, it is recommended that the Notices of Tax Liability be upheld in total.

Enter: January 3, 2008

Julie-April Montgomery  
Administrative Law Judge